

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MARIA-ELENA PANDO, INDIVIDUALLY §
and as REPRESENTATIVE OF THE §
ESTATE OF JOEL G. PANDO, DECEASED §
§
§

Plaintiff

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

FILED
2006 DEC 4 PM 3:24
CLERK'S OFFICE
WESTERN DISTRICT OF TEXAS
BY DEPUTY

JUDGE PHILIP MARTINEZ

CIVIL ACTION NO. _____

EP06CA0423

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, Defendant The Prudential Insurance Company of America (“Defendant”; “Prudential”) files this Notice of Removal and would respectfully show as follows:

1. Defendant is party to an action commenced against it by Plaintiff Maria-Elena Pando in the 171st District Court of El Paso County, Texas, captioned as Cause No. 2006-4749, *Maria-Elena Pando, Individually and as Representative of the Estate of Joel G. Pando, Deceased v. The Prudential Insurance Company of America* (the “state action”). True copies of all process, pleadings and orders served on Defendant in the state action are attached hereto as Exhibit “A” with an index of same.

2. Defendant was served with Plaintiff’s Original Petition in the state action (the “Petition”) on November 3, 2006. Thus this Notice of Removal is timely filed.

3. In the Petition, Plaintiff seeks Accidental Death benefits allegedly owed her under the Johnson & Johnson Accidental Death and Dismemberment Coverage Plan (the "Plan"). The Plan is insured under The Prudential Insurance Company of America Group Contract No. G-42150-DE issued to Johnson & Johnson. The Group Insurance Certificate for the Plan is attached hereto as Exhibit "B."

4. The Plan is an "employee welfare benefit plan" as that term is defined by Section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*, as amended ("ERISA"). (*See Exhibit B, p. 8.*)

5. The claims in the Petition are claims to recover benefits and to enforce Plaintiff's rights under a qualified employee welfare benefit plan. (*See Exhibit A: Plaintiff's Original Petition, ¶¶ IV, VI, IX.*) Accordingly, the relief sought is available exclusively under ERISA Section 502. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 60-66 (1987).

6. It is well-settled that Congress has so completely preempted the area of ERISA law that any civil complaint arising in that area, even if it pleads state law claims only, "is necessarily federal in character." *Metropolitan Life*, 481 U.S. at 63-64; *Arana v. Ochsner Health Plan*, 338 F.3d 433, 437 (5th Cir. 2003); *Boren v. N.I. Industries, Inc.*, 889 F.2d 1463, 1465 (5th Cir. 1989). Therefore, the claims pleaded in the Petition are completely preempted by ERISA.

7. For the reasons detailed above, the claims pleaded in Plaintiff's Original Petition are ones over which this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 29 U.S.C. § 1132(e)(1). In addition, this Court has supplemental and pendant jurisdiction over the state claims in the Petition, if any.

8. Additionally, and in the alternative, removal is proper as there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest, costs

and attorneys' fees. 28 U.S.C. § 1332(a). Plaintiff is a citizen of the State of Texas. Defendant is a citizen of New Jersey and maintains its principal place of business in the state of New Jersey. Therefore, there is complete diversity between the parties. Further, the amount in controversy is for accidental death benefits in excess of the jurisdictional amount.

9. Accordingly, this matter may properly be removed to this Court by Defendant.
10. Defendant has given notice of this Removal to Plaintiff and to the 171st District Court of El Paso County, Texas.

WHEREFORE, Defendant The Prudential Insurance Company of America prays that this action be removed to the United States District Court for the Western District of Texas, El Paso Division, from the 171st District Court of El Paso County, Texas.

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**



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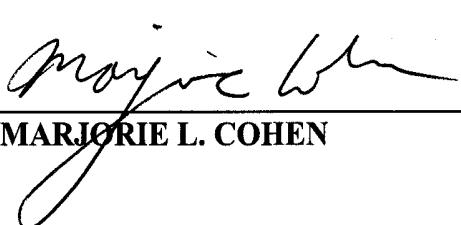
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to all attorneys of record in accordance with the Federal Rules, on this 1st day of December, 2006.

Via CMRRR 7160 3901 9849 8375 7957

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